

STATE REPORTER  
OF  
EDUCATION LAW  
VOLUME 7

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF  
MONTANA:

RAYMOND HARRIS,

Appellant/Cross Respondent,

v.

No. OSPI 138-87

Decided: Dec. 12, 1988

TRUSTEES, CASCADE COUNTY SCHOOL  
DISTRICT NO. 6 & F,

Respondent/Cross Appellant.

Decision and Order by Ed Argenbright. State Superintendent.

Appeal from the Cascade County Superintendent of Schools.

TEACHERS--REDUCTION IN FORCE--TENURE, Statutory procedure for  
termination of a tenured teacher

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This matter has been submitted on the briefs of the parties. It involves the statutory procedure for termination of a tenured teacher, Raymond Harris, pursuant to Section 20-4-204, MCA (with its 1985 amendments). In that respect, this case **is** similar to Michael Birrer v. Trustees, Wheatland County School District No. 16, OSPI 133-87 [7 Ed Law 145]. It differs in that the July 12, 1987 decision of the Cascade County Superintendent of Schools provides that a "new" half-time position, which was "created" after the Reduction in Force (RIF) of the teacher's position here, would have to be offered first to the terminated tenured teachers under the doctrine of Massey v. Argenbright, 683 P.2d 1332 (Mont. 1984) at p. 1335 [3 Ed Law 142]. See also County Superintendent's decision, page 3, line 13.

For the reasons set forth in Birrer, I affirm the Cascade County Superintendent and hold that the Findings 1 through 13 are supported by substantial, credible evidence in the record, and that Conclusions of Law 1 through 4 are, not clearly erroneous and are supported by the findings.

It is also apparent from this case, that the position held by the teacher here was reduced from full-time to half-time. While the form of the structure may indicate a new half-time and an old full-time position, I must reject the hyper-technical interpretation suggested by the school district here, just as I have rejected it above for Section 20-4-204, MCA. In a state with over 380 elementary districts and over 160 high school districts, many of which have less than 100 students, procedural rights must be protected. At the same time, however, school districts under Article X, Section 8, 1972 Montana Constitution, should be given the flexibility to manage and supervise their schools without a set of hyper-technical statutory traps waiting to "catch" the well-meaning, but unwary, school board or tenured teacher faced with a need to implement a RIF.

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Further, teachers who possess the valuable right of tenure should not be subject to hypertechnical personnel policies which, in small school districts frequently having 10 to 15 or fewer teachers, destroy positions on one hand and create on the other. Tenure would have very little value if a school district could abolish full-time positions and re-create half-time positions to circumvent tenure. Such a drastic change in policy should be implemented by the legislature, if at all. See Saxtorph v. District Court, 128 Mont. 353, 275 P.2d 209 (1954), and reaffirmed most recently in Massey, supra.

The entire Decision of the Cascade County Superintendent, which gives the RIFed teacher the first opportunity to serve in the half-time position, must be affirmed.

IT IS SO ORDERED.

DATED this 12th day of December, 1988.

s/Ed Argenbright  
State Superintendent